

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROY DUANE CALHOUN

Petitioner,

v.

Case No. 05-74614

KENNETH McKEE,

Respondent.

**OPINION AND ORDER GRANTING PETITIONER'S APPLICATION FOR
LEAVE TO PROCEED ON APPEAL *IN FORMA PAUPERIS***

The standard for granting an application for leave to proceed *in forma pauperis* is a lower standard than the standard for certificates of appealability. See *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002). Whereas a certificate of appealability may only be granted if petitioner makes a substantial showing of the denial of a constitutional right, a court may grant leave to proceed *in forma pauperis* if it finds that an appeal is being taken in good faith. *Id.* at 764-65; 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a). "Good faith" requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster*, 208 F. Supp. 2d at 765. Although the court in a separate order declined to issue a certificate of appealability, the court cannot conclude that Petitioner's claims are frivolous. The court further notes that in December 2005 Magistrate Judge Whalen granted Petitioner's application to proceed without prepayment of fees. (12/30/05 Order.) That determination, coupled with Petitioner's affidavit in support of his instant application, convince the court that his financial condition has not appreciably changed.

Accordingly, the court will grant Petitioner's motion for leave to proceed on appeal *in forma pauperis*.

III. CONCLUSION

IT IS ORDERED that the application to proceed *in forma pauperis* [Dkt # 46] is GRANTED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 30, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 30, 2007, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522